

VZCZCXRO6483  
RR RUEHGR  
DE RUEHKG #0221/01 0441909  
ZNR UUUUU ZZH  
R 131909Z FEB 07  
FM AMEMBASSY KINGSTON  
TO RUEHC/SECSTATE WASHDC 4330  
INFO RUCPDOG/USDOC WASHDC  
RUCNCOM/EC CARICOM COLLECTIVE  
RUEATRS/DEPT OF TREASURY WASHDC  
RUEHSJ/AMEMBASSY SAN JOSE 1881

UNCLAS SECTION 01 OF 02 KINGSTON 000221

SIPDIS

SENSITIVE

STATE FOR EB/TPP/MTA/CIP, WHA/EPSC AND WHA/CAR

DEPARTMENT PLEASE PASS TO USPTO, USTR

SANTO DOMINGO FOR FAS AND FCS

SIPDIS

E.O. 12958: N/A

TAGS: [KIPR](#) [ECON](#) [ETRD](#) [USTR](#) [JM](#)

SUBJECT: JAMAICA: 2007 SPECIAL 301 REVIEW - EMBASSY INPUT

REF: A. STATE 07944

This message is sensitive but unclassified. Please handle accordingly.

This message responds to reftel request for post input for the Special 301 Interagency Review Process. It also contains an action request in paragraph 8.

#### SUMMARY

1. (SBU) Summary and Recommendation: Embassy Kingston recommends that Jamaica remain on the Special 301 Watch list, due to its continuing failure to pass a WTO TRIPS-consistent patent law. Its trademark and copyright regimes meet international standards and enforcement efforts over the past year have been commendable. Ministry officials and the Acting Executive Director of the Jamaica Intellectual Property Office (JIPO) are keen to have the Patents and Designs Act passed and Jamaica removed from the Special 301 Watch List, but the legislative process has been glacial. Jamaica also faces difficulty in receiving adequate assistance, at times, from U.S. rights-holders when it does attempt to prosecute cases, due to the small scale of the piracy. End Summary and Recommendation.

#### LEGISLATION

2. (SBU) Jamaica is on the Watch List primarily because its intellectual property rights laws do not meet WTO TRIPS standards. Jamaica has had TRIPS-compliant trademark and copyright acts in place since 1999. In January 2004, the Jamaican Parliament approved a bill to protect Geographical Indications, but has yet to pass implementing regulations. Most disturbingly, new patent, plant variety, and industrial design laws are no closer to reality today than they were at the January 2000 TRIPS implementation deadline. GOJ officials repeatedly insist that passage of a new TRIPS-compliant patent law is a high priority, but this claim is undercut by the fact that it has languished for nearly four years.

3. (SBU) Embassy Kingston has continued its lobbying efforts over the past year. Embosffs have strong and continuous contact with the Jamaica Intellectual Property Office (JIPO). On February 6, 2007, embosffs met with representatives of JIPO Lonette Fisher-Lynch and Edward Brightly (Note: Brightly was, until recently, the Acting Executive Director of JIPO. Endnote) to discuss legislative developments relating to IPR. Brightly noted that the Samuelson

Law, Technology, and Public Policy Clinic from the University of California at Berkeley had reviewed the latest version of the Patents and Designs Act, and had offered extensive recommendations. These were being reviewed by the Attorney General, after which the act will be sent to cabinet and then parliament for discussion and eventual passage into law. Brightly said that the Attorney General's office had completed its review, but admitted that it was highly unlikely that the Act would be tabled in Parliament before late 2007.

#### BROADCAST

14. (SBU) In the past, the U.S. television/cable industry has criticized Jamaica's broadcast of copyrighted material without permission. However, anecdotal evidence from cable operators in Jamaica indicates that attempts to secure licensing agreements with U.S. firms have met with a lack of interest, as a result of the inadequate size of the market. That being said, Richard Pardy, CEO of Flow, Inc., a provider of data services, voice telecommunications, and subscription video, told Econoff that at the Caribbean Cable Show in St. Kitts in early February, HBO announced its intention to launch a Caribbean package. In general, Jamaica's Broadcast Commission takes seriously its responsibility to ensure that local cable television license holders have obtained permission from content providers to broadcast copyrighted material.

#### ENFORCEMENT

15. (SBU) The GOJ had several enforcement successes in 2006, with the police seizing illegal goods from a number of storeowners, street vendors, and distributors. In one notable case, in August 2006, officers from the Jamaica Constabulary Force (JCF) raided a Kingston

KINGSTON 00000221 002 OF 002

warehouse and confiscated over 35,000 illegal CDs, DVDs, an audio cassettes with in excess of JMD 1 million (approximately USD 15,000). Brightly noted that prosecutions had been successful over the year, but Fisher-Lynch observed that judges still required greater awareness of the need to apply penalties that created a significant disincentive to returning to the trade in pirated goods. Fisher-Lynch noted, for example, that the law allowed for a fine of JMD 100,000 (approximately USD 1,500) per count (i.e. - a pirated CD with 15 songs could warrant a JMD 1.5 million (USD 22,000) fine). Judges, however, seemed reluctant to levy such penalties against the street-level peddlers in pirated goods.

16. (SBU) Both Brightly and Fisher-Lynch commented that in some cases prosecutions were hampered by either (A) Jamaican rights-holders being unaware of the value of seeing cases through, or (B) foreign rights-holders being unwilling to invest time and effort in assisting in the prosecution of offenders, due largely to the low impact that street peddlers economically on large entities. They cited a case in which they sought the assistance of the Motion Picture Association of America (MPAA), needing an affidavit in order to see the prosecution through. They maintained that they never heard back, and had to drop the case. Econoff encouraged JIPO to seek the assistance of the Embassy where appropriate.

17. (U) The GOJ has been very keen to take advantage of training courses offered by the USG, in particular the enforcement academies offered by the United States Patent and Trademark Office (USPTO). In 2006, four Jamaican individuals attended training in Alexandria, Virginia, and Post continues to seek nominations of qualified individuals for such courses. As always, a lack of resources means that the GOJ is unable to send personnel for training at its own expense.

18. (U) Action Request: Brightly and Fisher-Lynch noted that JIPO was looking closely at the collateralization of intellectual property assets. They requested USG assistance in identifying speakers with the requisite skills and knowledge to present at a seminar, tentatively suggested for May 2007 (after Jamaica finishes hosting Cricket World Cup matches in March and April). They expressed particular interest in up to three speakers in the following areas:

- [¶A.](#) The value of intellectual property.
- [¶B.](#) Why undertake valuation of IP assets?
- [¶C.](#) How is IP valuation done?
- [¶D.](#) The importance of proper valuation of intellectual property for obtaining financing.
- [¶E.](#) Collateralization of IP assets.
- [¶F.](#) Using IP assets to finance your business.

Post requests that EB/IPE assist in identifying USG and/or private sector individuals with expertise in this area. Post point of contact is Economic Officer John Morgan (morganjs@state.gov) and please cc Elvis James (jamesem@state.gov).

COMMENT

-----

[¶9.](#) (SBU) Post believes that continuing presence on the Special 301 Watch List is required to encourage Jamaica to pass the Patents and Design Act. Nevertheless, Post believes that the GOJ makes a sincere effort to comply with its IPR obligations in other areas. Considering the enormous financial limitations under which the GOJ operates, and given the vast resources that must be diverted to security, it is commendable that the GOJ makes the efforts that it does. Given that these constraints are not limited to Jamaica, a regional training in the Caribbean by USPTO may allow the smaller economies to find funds to travel to each other. At the same time, it would leverage the assets of USPTO: rather than funding various (and relatively few) participants to travel to Washington, a regional seminar in Kingston, for example, would allow for more people to attend, and would contribute to efforts to raise the profile of the issue in the Caribbean.

JOHNSON